IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 424 of 2001.

Judgement reserved on: 4.5.2007

Date of decision: 21.5.2007.

Gian Chand ….. Appellant.

Vs.

Dhameshwar Dutt & ors. …. Respondents.

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Ashok Kumar Sud, Advocate.

For the Respondents : Mr. Ashwani Pathak, Advocate, for respondents No. 1 & 2.

Mr. Sanjeev Sood, Advocate, vice Mr.K.D.Sood, Advocate, for respondent No.3.

Kuldip Singh, Judge.

This appeal is by truck owner respondent No. 1 Gian Chand against the order dated 28.8.2001, passed by Commissioner, Workmen Compensation, Rampur Bushahr, District Shimla, in case No. 11/91, awarding Rs. 1,67,552/- compensation to claimants. .

2. Brief facts are that Rajinder Kumar was employed as driver by Gian Chand owner of truck No. HPS-5503 and he died during the course of his employment, in an accident of said truck on 19.4.1991. He was 20 years of age and was being paid wages Rs. 1500/- per month. The petitioners were dependant on deceased

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Whether the reporters of the local papers may be allowed to see the Judgment?

being minor brothers of the deceased. Respondent No.1 did not pay any amount by way of compensation to the claimants on account of death of Rajinder Kumar.

3. The respondent No.1 admitted that Rajinder Kumar was engaged as driver on truck and he died in the intervening night of 18/19.4.1991 at Jabali in an accident of truck No. HPS-5503 owned by respondent No. 1. It has also been admitted that deceased was being paid Rs. 1500/-, per month salary.

4. The respondent No.2 contested the petition on the grounds that deceased Rajinder Kumar was not holding valid and effective driving licence at the time of the accident and he could not be an employee of respondent No.1. The claimants were not dependant upon the deceased and are not entitled to file the petition. The respondent No.3 was not informed of the accident. The insurance company is not liable to pay the compensation.

5. The Commissioner returned the finding that Rajinder Kumar was an employee of respondent No.1 and he was being paid Rs. 1500/- per month as wages. The claimants were dependant upon the deceased, who was 20 years of age at the time of accident. The Commissioner has awarded total amount Rs. 1,67,552/- to claimants as compensation on account of death of Rajinder Kumar. Out of Rs. 1,67,552/-, an amount of Rs. 89,600/- has been awarded towards compensation calculated on the basis of wages of the deceased and this amount has been ordered to be paid by the insurance company. The respondent No. 1 has been directed to pay interest amounting to

Rs. 55,552/- and penalty Rs. 22,400/-. In these circumstances, Gian Chand, respondent No.1 owner of the truck is in appeal.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The appeal has been admitted without reference to any substantial questions of law. On the basis of the material on record, the parties have been heard on the following substantial question of law:-

> Whether owner of the insured vehicle is liable to pay interest on the compensation awarded and also penalty under the Workmen Compensation Act, 1923?

8. The controversy involved in the present appeal is very short. The order dated 28.8.2001, has been assailed only by the owner of the truck. The claimants and the insurance company have accepted the award. The Commissioner has awarded Rs. 55,552/- interest on the compensation amount for the period 19.4.1991 to 28.8.2001, under Section 4-A of the Act. The Commissioner has also awarded penalty at the rate of 25% amounting to Rs. 22,400/- on the compensation amount. Both these amounts have been ordered to be paid by the owner as per the impugned order. The interest is part of compensation and it is payable by the insurance company, if the vehicle is covered by the insurance policy. In the present case, the truck was insured which is clear from copy of judgement dated 18.10.1994 Ex. R-1 of Motor Accident Claims Tribunal (I), Shimla in MAC No. 56-S/2 of 1991 regarding same accident of truck No. HPS-5503, wherein while deciding issue No.4, the Tribunal has held that

vehicle was properly insured at the time of the accident. In **Ved Prakash Garg vs. Premi Devi and others [1997 (8) SCC 1]**, the Hon'ble Supreme Court, in para-19 of the judgement, has held as follows:-

> "As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

9. Thus in view of law laid down by the Hon'ble Supreme Court, the interest is jointly paid by the insured and insurer. In the present case, the truck was insured with the insurance company. Therefore, insurance company is liable to pay the interest on the compensation amount. The question is from which date the interest is payable. In ***National Insurance Co. Ltd. Versus Mubasir Ahmed and Another (2007) 2 SCC 349,*** the Hon'ble Supreme Court has held as follows:-

> "9. Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question

> of liability under Section 4-A was dealt with by this Court in *Maghar Singh v. Jashwant Singh.* By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

10. The adjudication in the present case has been done by the Commissioner vide order dated 28.8.2001, therefore, interest at the rate of 12% per annum is payable on the compensation amount of Rs. 89,600/- from the date of order i.e. 28.8.2001 till payment and is

to be paid by the insurance company to the claimants. The penalty amount awarded by the Commissioner, however, is to be paid by the owner of the truck to the claimants. The impugned award is modified and it is held that interest on the compensation is to be paid by the insurance company to the claimants. The substantial question of law is answered accordingly.

11. In view of above discussion, the appeal is partly allowed. The impugned order is modified. The insurance company shall pay the compensation amount of Rs. 89,600/- alongwith interest at the rate of 12% per annum on this amount w.e.f. 28.8.2001 to the claimants till payment. The respondent No.1 Gian Chand owner of the truck HPS-5503 shall pay the penalty Rs.22,400/- to the claimants. No costs.

May 21, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**